

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
South Central Utah Telephone Association, Inc.)	WT Docket No. 01-309
)	
Section 68.4(a) of the Commission's Rules Governing Hearing Aid Compatible Telephones)	
)	
Request for Temporary Waiver, or Temporary Stay, of Section 20.19(d)(2) of the Rules)	

To: Chief, Wireless Telecommunications Bureau

PETITION FOR TEMPORARY WAIVER OR TEMPORARY STAY

South Central Utah Telephone Association, Inc. (South Central), by its attorney, and pursuant to Sections 1.3 and 1.925 of the Commission's Rules, hereby requests a nine-month temporary waiver, or temporary stay, up to and including June 18, 2007, of the requirements contained in Section 20.19(d)(2) of the Rules, that South Central include in its handset offerings at least two handset models per air interface that comply with Rule Section 20.19(b)(2), and make available in each retail store owned or operated by it, all of these handset models for consumers to test in the store.

In support of this petition, the following is shown:

Background

1. South Central, a rural area telephone cooperative, is a small, Tier III Commercial Mobile Radio Service licensee, as defined in the Commission's E-911 *Order to Stay*, FCC 02-210, released July 26, 2002. In this regard, South Central is the licensee of stations KNLG223 and WQBL704 in the Broadband Personal Communications

Service (PCS). South Central serves the St. George, Utah BTA on the PCS F-block spectrum (station KNLG223) and utilizes Nortel Networks' CDMA equipment for its PCS network. On October 5, 2004, South Central completed its acquisition of a partitioned portion of Qwest Wireless, LLC's E-Block PCS license for the Salt Lake City-Ogden, Utah BTA (station WQBL704). The partitioned area consists of Piute County, Utah and portions of Sevier and Wayne Counties, Utah.

2. South Central markets 14 digital wireless telephone models, only one of which meets a U3T rating (more commonly called an M3T rating in the industry) for inductive coupling under ANSI Standard C63.19. Upon information and belief, it appears that in fact there may be only one handset commercially available to Tier III carriers (or at least available to South Central) that meets a U3T (or M3T) rating under ANSI Standard C63.19, namely, the Motorola V3 RAZR; and South Central markets this compliant handset to its customers.¹ As a result of the general unavailability of compliant handsets, South Central can offer only one compliant handset – thus leaving it one short of the two compliant handsets required by the Commission's Rules.

Rule Section 20.19(d)(2) Requirements

3. Section 20.19(d)(2) of the Commission's Rules specifies that "each provider of public mobile service must ... [i]nclude in their handset offerings at least two handset models for each air interface that comply with Section 20.19(b)(2) by September 18, 2006, and make available in each retail store owned or operated by the provider all of these handset models for consumers to test in the store ..." Rule Section 20.19(b)(2) specifies that a "wireless phone used for public mobile radio services is hearing aid

¹ See South Central's *Sixth Semi-Annual Report*, in WT Docket 01-309, filed concurrently. Actually, the Motorola V3 RAZR meets the more compelling T4 standard.

compatible ... if it meets, at a minimum” a U3T (or M3T) rating for inductive coupling under ANSI Standard C63.19. Thus, the rule requirement is generally applicable to all Tier III CMRS carriers. It requires South Central to offer, and to make available for in-store testing by consumers, for its CDMA digital air interfaces at least two Hearing Aid Compatible (“HAC”) digital wireless telephones meeting a U3T (or M3T) rating under ANSI Standard C63.19 for inductive coupling by the September 18, 2006 implementation deadline. Because South Central offers more than two digital wireless telephones for the CDMA air interface, it does not qualify for the *de minimis* exception codified in Section 20.19(e)(1) of the Commission’s Rules.

Waiver Standard

4. The Commission has indicated generally that waiver requests of the Hearing Aid Compatible (“HAC”) digital wireless handset requirements will be evaluated under the general waiver standard set forth in Sections 1.3 and 1.925 of the Rules and the standards set forth in WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972) and Northeast Cellular Telephone Company v. FCC, 897 F.2d 1164(D.C. Cir. 1990). Hearing Aid Compatible Telephones (WT Docket No. 01-309 – Order on Reconsideration and Further Notice of Proposed Rulemaking), FCC 05-122, released June 21, 2005 at Para. No. 50 (“Order on Reconsideration”).

5. Section 1.3 of the Rules states, in relevant part, that “[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.” Section 1.925(b)(3) of the Rules states that the “Commission may grant a waiver request if it is shown that: (i) [t]he underlying purpose of the rule(s) would

not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) [i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.” Under WAIT Radio and Northeast Cellular Telephone Company, a rule waiver “may be granted in instances where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the policy objective of the rule in question.” Order on Reconsideration, Para. 50 n. 158.

A Waiver Is Warranted Because Sufficient Compliant Handset Models Are Not Available To Small Carriers

6. The reason in support of this waiver request is starkly simple and can be concisely stated: There appears to be only one HAC compliant digital wireless telephone model available for purchase by smaller carriers, such as South Central, that meets the U3T (or M3T) rating under ANSI Standard C63.19 for inductive coupling. As a result, full compliance with the requirements of Section 20.19(d)(2) of the Rules is an impossibility; and, therefore, a temporary waiver of the Rule’s requirements is clearly warranted.

7. In adopting the Rule Section 20.19(d)(2) September 18, 2006 implementation deadline for Tier II and Tier III CMRS carriers, the Commission projected (but, obviously, could not assure) that a sufficient number of models of digital wireless handsets meeting a U3T (or M3T) rating under ANSI Standard C63.19 for inductive coupling would be made available by the manufacturers for purchase by smaller carriers by that date. Hearing-Aid Compatible Telephones (WT Docket No. 01-309 – Report and

Order), 18 FCC Rcd. 16753 (2003). While some industry progress has been made toward developing compliant handsets, it does not appear that research, development and manufacturing activities have reached the point where the handset manufacturers can make a sufficient number of models of compliant handsets commercially available to any carrier (large or small).

8. Assuming for purposes of argument that more-than-one compliant digital wireless handset model is commercially available for the CDMA air interface, it is nevertheless clear that a sufficient number of models are not available for purchase by smaller carriers such as South Central.

9. Given these facts and circumstances, it seems abundantly clear that the temporary relief requested herein is warranted and in the public interest, and that good cause exists to grant the temporary waiver requested. Where the Commission's projections of technological feasibility and commercial availability do not pan out, waiver of the requirements would appear to be particularly appropriate. Indeed, basic principles of administrative law prohibit the Commission from compelling carriers to do the impossible. See, e.g., Alliance for Cannabis Therapeutics v. DEA, 930 F.2d 936, 940 (D.C. Cir. 1991); Hughey v. JMS Development Corp., 78 F.3d 1523, 1530 (11th Cir. 1996). Furthermore, the Commission has acknowledged that Tier II and Tier III CMRS carriers "have much less ability than the nationwide CMRS carriers to obtain specific vendor commitments necessary" to deploy the equipment needed to meet regulatory requirements; that "handset vendors ... give priority to the larger, nationwide carriers;" that the deployment needs of the larger carriers create "downstream delays for Tier II and III carriers;" and, accordingly, "that there are temporary and special circumstances

applicable to [Tier II and Tier III carriers] that constitute a sufficient basis to grant a stay on a limited and temporary basis” from Commission-imposed regulatory requirements. Non-Nationwide Carriers (Order to Stay), 17 FCC Rcd. 14841, Para Nos. 10 and 11 (2002). See also, FCI 900, Inc., 16 FCC Rcd. 11072 (Comm. Wir. Div., WTB 2001) (granting all 900 MHz MTA licensees an extension of the construction deadline so that they might deploy advanced digital 900 MHz systems, where the subject digital voice equipment was not commercially available in sufficient quantities in time to meet the five-year construction deadline).² South Central simply has no control over the equipment development, manufacturing and distribution practices of the handset manufacturers. The lack of sufficient, available digital wireless handset models for the CDMA air interface that meet the Commission’s HAC requirements for inductive coupling is, quite obviously, a circumstance clearly beyond South Central’s control. In view of the unique or unusual factual circumstances present here, application of the rule would clearly be inequitable, unduly burdensome and contrary to the public interest. In view of the fact only one compliant digital wireless handset model is currently available to smaller carriers (at least for purchase by South Central), South Central clearly has no reasonable alternative but to request the instant waiver.

² Additional case precedent supports this position. See Leap Wireless International, Inc., 16 FCC Rcd. 19573 (Comm. Wir. Div., WTB (2001) (granting extension of time so that licensee might deploy “high data rate” wireless technology that was not available in time to meet the five-year construction requirement); Monet Mobile Networks, Inc., 17 FCC Rcd. 6452 (Comm. Wir. Div., WTB 2002) (granting extension of time so that licensee might deploy “high data rate” wireless technology that was not available in time to meet the five-year construction requirement); and Warren C. Havens, Mimeo DA 04-2100, adopted July 12, 2004 (granting extension of the five-year construction requirement for 20 MHz licensees to allow for the use of next-generation digital technology in the band).

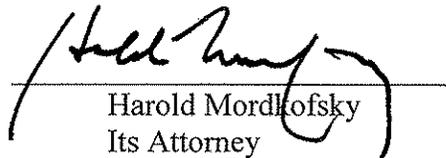
10. South Central wishes to assure the Commission that it is committed to providing its hearing-impaired subscribers with at least two models of digital wireless handsets meeting a U3T (or M3T) rating under ANSI Standard C63.19 for the CDMA air interface at the earliest practicable date, and that it will do so promptly once the handsets become generally available to Tier III carriers.³ In this regard, South Central wishes to emphasize that it is partially compliant with the Commission's requirements because it currently markets the one handset model available to it that meets a U3T (or M3T) rating for inductive coupling under ANSI standard C63.19.

WHEREFORE, good cause having been shown, South Central requests that the instant petition be granted.

Respectfully submitted,

**South Central Utah Telephone
Association, Inc.**

By:


Harold Mordkofsky
Its Attorney

*Blooston, Mordkofsky, Dickens,
Duffy & Prendergast, LLP
2120 L Street, N.W.
Washington, D.C. 20037
Tel: (202) 828-5520
Fax: (202) 828-5568*

Filed: November 17, 2006

³ It is expected that the Motorola KRAZR K1m, which is T4 rated, will be available to South Central in January 2007; and, once available, it will be purchased by South Central, thereby increasing to two the number of offered handsets with at least a U3T (or M3T) rating.